

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
MAY 5, 6, 7, and 8, 2008**

**FIRST AMENDED**

The following cases are placed upon the calendar of the Supreme Court for hearing at its courtroom in the Earl Warren Building, 350 McAllister Street, Fourth Floor, San Francisco, California, on May 5, 6, 7, and 8, 2008.

**MONDAY, MAY 5, 2008—1:30 P.M.**

- (1) S142211 Mayer et al. v. L & B Real Estate
- (2) S037625 People v. Harris (Lanell) [Automatic Appeal]
- (3) S042224 People v. Cruz (Tomas Verano) [Automatic Appeal]

**TUESDAY, MAY 6, 2008—9:00 A.M.**

- (4) S139133 Miklosy et al. v. Regents of the University of California et al.
- (5) S136468 Silicon Valley Taxpayers Assn. v. Santa Clara County Open Space Authority
- (6) S144813 Berglund v. Arthroscopic & Laser Surgery Center

**2:00 P.M.**

- (7) S149257 State Compensation Ins. Fund v. Workers' Compensation Appeals Board (Sandhagen) and consolidated case
- (8) S045060 People v. Loker (Keith) [Automatic Appeal]
- (9) S056765 People v. Parson (Richard Ray) [Automatic Appeal]

**WEDNESDAY, MAY 7, 2008—9:00 A.M.**

- (10) S149851 Bouton v. USAA Casualty Insurance Co.  
and S149847 O'Hanesian v. State Farm Mutual (*consolidated cases*)
- (11) S141541 Crawford et al. v. Weather Shield Manufacturing, Inc.
- (12) S148949 People v. Allen (Tony Lee)

**1:30 P.M.**

- (13) S147510 People v. Cuevas (Saul Garcia)
- (14) S089623 People v. Wilson (Lester Harland) [Automatic Appeal]
- (15) S043187 People v. Riggs (Billy Ray) [Automatic Appeal]

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**THURSDAY, MAY 8, 2008—9:00 A.M.**

- (16) S140547 Environmental Protection Information Center et al. v. Calif. Dept. of Forestry and Fire Protection et al. (Pacific Lumber Company et al., Real Parties in Interest) (and three other cases)
- (17) S141357 People v. Evans (Blaine)
- (18) S141654 People v. Najera (Michael)

**1:30 P.M.**

- (19) S147051 People v. Nelson (Dennis Louis)
- (20) S056997 People v. Whisenhunt (Michael McCrea) [Automatic Appeal]
- (21) S070686 People v. Romero (Gerardo) [Automatic Appeal]

WERDEGAR, J.

*Acting Chief Justice*

If exhibits are to be transmitted to this court, counsel must apply to the court for permission. (See Cal. Rules of Court, rule 8.224(c) (formerly rule 18(c)).)

**SUPREME COURT OF CALIFORNIA  
ORAL ARGUMENT CALENDAR  
SAN FRANCISCO SESSION  
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**FIRST AMENDED**

The following case summaries are issued to inform the public and the press of cases that the Supreme Court has scheduled for oral argument and of their general subject matter. Generally, the descriptions set out below are reproduced from the original news release issued when review in each of these matters was granted and are provided for the convenience of the public and the press. The descriptions do not necessarily reflect the view of the court or define the specific issues that will be addressed by the court.

**MONDAY, MAY 5, 2008—1:30 P.M.**

***(1) Mayer et al. v. L & B Real Estate, S142211***

#06-60 Mayer et al. v. L & B Real Estate, S142211. (B180540; 136 Cal.App.4th 947; Superior Court of Los Angeles County; BC283231.) Petition for review after the Court of Appeal reversed the judgment in a civil action. This case presents the following issue: Was plaintiffs' quiet title action barred by Revenue and Taxations Code section 3725 because it was not brought within one year of the sale of the property at a tax sale?

***(2) People v. Harris (Lanell), S037625 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

***(3) People v. Cruz (Tomas Verano), S042224 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**TUESDAY, MAY 6, 2008—9:00 A.M.**

***(4) Miklosy et al. v. Regents of the University of California et al., S139133***

#06-05 Miklosy et al. v. Regents of the University of California et al., S139133. (A107711; unpublished opinion; Superior Court of Alameda County; RG04140484.)

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Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issue: Does the requirement of the Whistleblower Protection Act (Gov. Code, §§ 8547–8547.12) that an employee of the University of California have “filed a complaint with the [designated] university officer” and that the university have “failed to reach a decision regarding that complaint within [specified] time limits” before an action for damages can be brought (§ 8547.10, subd. (c)) merely require the exhaustion of the internal remedy as a condition of bringing the action, or does it bar an action for damages if the university timely renders *any* decision on the complaint?

***(5) Silicon Valley Taxpayers Assn. v. Santa Clara County Open Space Authority, S136468***

#05-200 Silicon Valley Taxpayers Assn. v. Santa Clara County Open Space Authority, S136468. (H026759; 130 Cal.App.4th 1295; Superior Court of Santa Clara County; CV804474, CV000705.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. This case includes the following issues: (1) In a legal action contesting the validity of an assessment under article XIII D of the California Constitution, what standard of review should a court apply in reviewing the determination of the agency proposing to levy the assessment that the properties on which the assessment is to be imposed will “receive a special benefit over and above the benefits conferred on the public at large and that the amount of any contested assessment is proportional to, and no greater than, the benefits conferred on the property or properties in question,” as required by the applicable constitutional provision? (See Cal. Const., art. XIII D, § 4, subd. (f).) (2) Can the benefit that future purchases of unidentified open space will confer upon everyone who lives or works within the assessment district be characterized as a “special benefit” to each parcel in the district within the meaning of article XIII D? (3) Under article XIII D, may the assessing agency impose an identical assessment on all similar properties (e.g., all single-family residences) within the

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assessment district or must it calculate the special benefit and proportional cost to each individual parcel?

***(6) Berglund v. Arthroscopic & Laser Surgery Center, S144813***

#06-93 Berglund v. Arthroscopic & Laser Surgery Center, S144813. (D045218; 139 Cal.App.4th 904; Superior Court of San Diego County; GIC753465.) Petition for review after the Court of Appeal reversed an order in a civil action. This case presents the following issues: (1) When an arbitrator issues a discovery order to a third party who is not bound by the arbitration agreement, may that third party seek judicial review of its objections to discovery? (2) If so, what is the scope of judicial review of such an order?

### **2:00 P.M.**

***(7) State Compensation Ins. Fund v. Workers' Compensation Appeals Board (Sandhagen), S149257 and consolidated case***

#07-16 State Compensation Ins. Fund v. Workers' Compensation Appeals Board (Sandhagen), S149257 and consolidated case. (C048668; 144 Cal.App.4th 1050; C049286.) Petition for review after the Court of Appeal denied petitions for writ of review of a decision of the board. This case presents the following issue: May an employer who does not timely act on an injured worker's medical treatment request under the utilization review process set forth in Labor Code section 4610 nevertheless obtain review of the treatment request under the more general dispute resolution procedures set forth in Labor Code section 4062?

***(8) People v. Loker (Keith), S045060 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

***(9) People v. Parson (Richard Ray), S056765 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

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**WEDNESDAY, MAY 7, 2008—9:00 A.M.**

***(10) Bouton v. USAA Casualty Insurance Co., S149851 and O’Hanesian v. State Farm Mutual, S149847 (consolidated cases)***

#07-84 Bouton v. USAA Casualty Insurance Co., S149851. (D048522; 145 Cal.App.4th 1441; Superior Court of San Diego County; GIN048502) and #07-85 O’Hanesian v. State Farm Mutual, S149847. (E038144; 145 Cal.App.4th 1305; Superior Court of Riverside County; INC45408) (*consolidated cases*). Petitions for review (1) after the Court of Appeal (in *Bouton*) reversed an order denying a petition to compel arbitration and (2) after the Court of Appeal (in *O’Hanesian*) affirmed the judgment in a civil action. Both cases present issues related to the questions — (a) whether the insured under an underinsured motorist insurance policy is entitled to collect damages from the driver of the underinsured vehicle and (b) if so, the amount — that Insurance Code section 11580.2, subdivision (f), and the policy in each of these cases otherwise leave to the arbitrator. In *Bouton*, the issue presented is: Does the arbitrator or the court decide whether a claimant is an insured under an underinsured motorist insurance policy? In *O’Hanesian*, the issue presented is: Does the arbitrator or the trial court decide whether a prior default judgment against the driver of the underinsured vehicle resolves questions (a) and (b)?

***(11) Crawford et al. v. Weather Shield Manufacturing, Inc., S141541***

#06-58 Crawford et al. v. Weather Shield Manufacturing, Inc., S141541. (G032301; 136 Cal.App.4th 304; Superior Court of Orange County; 815154.) Petition for review after the Court of Appeal affirmed the judgment in a civil action. The court limited review to the following issue: Did a contract under which a subcontractor agreed “to defend any suit or action” against a developer “founded upon” any claim “growing out of the

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execution of the work” require the subcontractor to provide a defense to a suit against the developer even if the subcontractor was not negligent?

### ***(12) People v. Allen (Tony Lee), S148949***

#07-70 People v. Allen (Tony Lee), S148949. (E039518; 144 Cal.App.4th 1132; Superior Court of San Bernardino County; FSB47031.) Petition for review after the Court of Appeal affirmed an order of commitment as a sexually violent predator. This case presents the following issue: Does a defendant represented by counsel have the right to testify over counsel’s objection in a proceeding to commit the defendant as a sexually violent predator?

**1:30 P.M.**

### ***(13) People v. Cuevas (Saul Garcia), S147510***

#07-01 People v. Cuevas (Saul Garcia), S147510. (B168269; 142 Cal.App.4th 1141; Superior Court of Los Angeles County; LA040073.) Petition for review after the Court of Appeal remanded for resentencing and otherwise affirmed a judgment of conviction of criminal offenses. This case presents the following issues: (1) Was defendant required to obtain a certificate of probable cause in order to claim on appeal that the sentence imposed violated Penal Code section 654, when he entered his no contest plea with an understanding of the maximum sentence he faced although the plea agreement did not specify a maximum sentence? (2) Does rule 4.412(b) of the California Rules of Court bar defendant from challenging his sentence under Penal Code section 654 in such circumstances?

### ***(14) People v. Wilson (Lester Harland), S089623 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

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### ***(15) People v. Riggs (Billy Ray), S043187 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

**THURSDAY, MAY 8, 2008—9:00 A.M.**

### ***(16) Environmental Protection Information Center et al. v. Calif. Dept. of Forestry and Fire Protection et al. (Pacific Lumber Company et al., Real Parties in Interest), S140547 (and three other cases)***

#06-36 Environmental Protection Information Center et al. v. Calif. Dept. of Forestry and Fire Protection et al. (Pacific Lumber Company et al., Real Parties in Interest), S140547 (and three other cases). (A104828, A104830, A105388, A105391; 134 Cal.App.4th 1093; Superior Court of Humboldt County; CV990445.) Petition for review after the Court of Appeal reversed the judgment in an action for writ of administrative mandate. This case presents issues relating to environmental review of the master plan for timber harvesting related to the Headwaters Forest Project.

### ***(17) People v. Evans (Blaine), S141357***

#06-45 People v. Evans (Blaine), S141357. (A107822; 135 Cal.App.4th 1178; Superior Court of San Mateo County; SC056254.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. The court limited review to the following issue: Did the trial court deny defendant due process or violate any right of allocution when it denied his request to speak on his own behalf before the court imposed sentence?

### ***(18) People v. Najera (Michael), S141654***

#06-47 People v. Najera (Michael), S141654. (D046044; 135 Cal.App.4th 1125; Superior Court of San Diego County; SCN181843.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. This case presents the

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following issue: In a theft-related case, does the trial court have a duty to instruct the jury, without a request by any party, with CALJIC No. 2.15 concerning the significance of the defendant's possession of recently stolen property? (See also CALCRIM No. 376 [Possession of Recently Stolen Property as Evidence of a Crime].)

### ***(19) People v. Nelson (Dennis Louis), S147051***

#06-127 People v. Nelson (Dennis Louis), S147051. (C047366; 142 Cal.App.4th 696; Sacramento County Superior Court; 02F06021.) Petition for review after the Court of Appeal affirmed a judgment of conviction of a criminal offense. This case includes the following issues: (1) Is the methodology for assessing the statistical significance of a “cold hit” from a DNA database a novel scientific question requiring proof of general scientific acceptance under *People v. Kelly* (1976) 17 Cal.3d 24 and *People v. Leahy* (1994) 8 Cal.4th 587? (2) How should the statistical significance of a “cold hit” from a DNA database be calculated?

### ***(20) People v. Whisenhunt (Michael McCrea), S056997 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.

### ***(21) People v. Romero (Gerardo), S070686 [Automatic Appeal]***

This matter is an automatic appeal from a judgment of death.